

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

No. CIV 08-0501 JB/ACT

BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY  
OF DONA ANA, NEW MEXICO,

Defendant.

**MEMORANDUM OPINION AND ORDER**

(Public Version)<sup>1</sup>

**THIS MATTER** comes before the Court on the Plaintiff's Motion for Protective Order Regarding Discovery and Disclosure of the Alleged Victims' Sexual Behavior and Disposition, filed June 2, 2009 (Doc. 85). Plaintiff United States of America also filed a memorandum in support of its motion. See Plaintiff's Memorandum in Support of Motion for Protection Order Regarding Discovery and Disclosure of the Alleged Victims' Sexual Behavior and Predisposition, filed June 2, 2009 (Doc. 86) ("Memo."). The Court held a hearing on July 16, 2009. The primary issues are:

(i) whether the Court should issue a protective order prohibiting Defendant Board of County Commissioners of the County of Doña Ana, New Mexico ("Doña Ana County") from conducting discovery that includes information about the alleged victims' sexual behavior or predisposition; and

(ii) whether the Court should issue a protective order restricting Doña Ana County's use and

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<sup>1</sup> This opinion contains the redactions that the United States requested in its Motion for Sealing and Redaction of Memorandum Opinion and Order, filed February 26, 2010 (Doc. 303). The Court granted the motion on March 8, 2010. See Order, filed March 8, 2010 (Doc. 309). The original opinion is now filed under seal, and this opinion is substituted in its place.

disclosure of any such evidence that it has or may acquire. The Court concludes that it should grant the motion in part and deny it in part. The Court will not prohibit Doña Ana County from asking the victims which of their fellow employees, if any, they have dated; the Court will otherwise grant the motion and issue the protective order.

### **PROCEDURAL BACKGROUND**

The United States brought this suit to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e through 2000e-17. See Complaint and Demand for Jury Trial ¶ 1, at 1, filed May 21, 2008 (Doc. 1) (“Complaint”).<sup>2</sup> In its Complaint, the United States alleges that Doña Ana County has discriminated against victims Sally Ramirez, Graciela Chavez, Priscilla Lujan, Priscilla Salazar, and Maria Isabel Morales on the basis of their sex by: “(a) Subjecting them to sexual harassment by a supervisor, Johnny Gomez, thereby creating and maintaining a hostile work environment that adversely affected the terms, conditions and privileges of their employment; and (b) Failing or refusing to take appropriate action to prevent and promptly correct the discriminatory treatment and its effects.” Complaint ¶ 7, at 2. The relevant sexual harassment allegedly consisted of Gomez using derogatory terms to refer to women, asking about and/or commenting on the sex lives of female members of his staff and women generally, and criticizing behaviors of women that he did not criticize in men. See Complaint ¶ 8, at 2-3.

The United States moves the Court for a protective order that would mandate four things: (i) that Doña Ana County “may not seek from the alleged victims identified in the United States’ Complaint discovery related to their sexual behavior or predisposition;” (ii) that the “parties shall file under seal all documents that contain or reference information related to the alleged victims’

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<sup>2</sup> The United States alleges that it has satisfied all prerequisites under federal law to bring this suit. See Complaint ¶¶ 4-6, at 1-2.